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14 *ELECTRIC SOLIDUS, INC. d/b/a SWAN BITCOIN*

15 **IN THE UNITED STATES DISTRICT COURT**

16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

17 ELECTRIC SOLIDUS, INC. d/b/a
18 SWAN BITCOIN, a Delaware
19 corporation,

20 Plaintiff,

21 v.

22 PROTON MANAGEMENT LTD., a
British Virgin Islands corporation;
23 THOMAS PATRICK FURLONG; ILIOS
CORP., a California corporation;
24 MICHAEL ALEXANDER HOLMES;
RAFAEL DIAS MONTELEONE;
25 SANTHIRAN NAIDOO; ENRIQUE
ROMUALDEZ; and LUCAS
26 VASCONCELOS,

27 Defendants.

Case No. 2:24-cv-8280-MWC-E

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
GIBSON, DUNN & CRUTCHER
LLP'S MOTION TO WITHDRAW AS
COUNSEL FOR PLAINTIFF
ELECTRIC SOLIDUS, INC. D/B/A
SWAN BITCOIN**

Date: January 10, 2025

Time: 1:30 p.m.

Place: Courtroom 6A

Judge: Hon. Michelle Williams Court

Action Filed: September 25, 2024

I. INTRODUCTION

Good cause exists for Gibson Dunn to withdraw as Swan’s counsel because there has been a complete breakdown of the attorney-client relationship. This is most evident from the fact that on November 22, 2024, Swan initiated a public lawsuit against Gibson Dunn in the Los Angeles County Superior Court asserting claims of breach of fiduciary duty and legal practice in connection with Gibson Dunn’s representation in this matter—an act that alone plainly constitutes good cause sufficient to justify the withdrawal of counsel. *See, e.g., Medina v. Boeing Co.*, 2022 WL 16949670, at *3 (C.D. Cal. May 9, 2022) (granting motion to withdraw as counsel where the plaintiff accused her counsel of “malpractice related to their performance in this matter”). Swan has also informed Gibson Dunn that it will “never” pay the legal fees it owes, which is an additional reason to permit withdrawal. *See, e.g., Holandez v. Entm’t, LLC*, 2023 WL 8114882, at *3 (C.D. Cal. Sept. 7, 2023) (internal citation omitted) (explaining that “the failure of a client to pay attorney’s fees will serve as grounds for an attorney to withdraw”).¹ When a client sues its counsel and declares that it will not pay any fees owed for completed legal work, there obviously has been a complete and irreparable breakdown of the attorney-client relationship.

Permitting Gibson Dunn to withdraw at this early stage of this action will result in no prejudice to Swan or the Defendants, and will neither harm the administration of justice nor delay the resolution of this case. Swan initiated this action less than three months ago, and there has been no scheduling order issued nor trial date set, and Gibson Dunn’s agreement with Swan permits it to withdraw at this stage of the case. Defendants have not yet responded to Swan’s complaint (and their responses are not due until December 23, 2024). Nor can Swan even credibly claim any prejudice by Gibson

¹ Gibson Dunn recognizes that Local Rule 83-2.3.2 do not necessarily support withdrawal as counsel solely due to the lack of payment of fees, but when coupled with a lawsuit alleging “betrayal” by counsel and a statement that fees will “never” be paid, Gibson Dunn has more than sufficient grounds to withdraw.

1 Dunn’s withdrawal when it is, at the same time, suing Gibson Dunn in another court
2 alleging a “betrayal” by Gibson Dunn and “malpractice” related to this very case. No
3 prejudice can exist under the circumstances. And there is no viable alternative to
4 withdrawal.

5 Gibson Dunn remains ready to promptly execute and file a substitution of counsel
6 so that Swan can continue this action with the replacement counsel of its choice. But
7 because Swan has refused to consent to such a substitution (despite suing Gibson Dunn),
8 Gibson Dunn has been left with no recourse but to file this motion.

9 In short, good cause exists for the Court to grant this motion and permit Gibson
10 Dunn to withdraw as Swan’s counsel.

11 II. LEGAL STANDARD

12 Under Local Civil Rule 83-2.3.2, “[a]n attorney may not withdraw as counsel
13 except by leave of court” and “[t]he motion for leave to withdraw must be supported by
14 good cause.” In addition, “[u]nless good cause is shown and the ends of justice require,
15 no substitution . . . of attorney will be approved that will cause delay in prosecution of
16 the case to completion.” Local Civil Rule 83-2.3.5.

17 “The decision to grant or deny counsel’s motion to withdraw is committed to the
18 discretion of the trial court.” *Anhing Corp. v. Thuan Phong Co. Ltd.*, 2014 WL
19 12591456, at *1 (C.D. Cal. Dec. 2, 2014) (internal citations omitted). Courts ruling upon
20 a motion to withdraw as counsel may consider, among other factors, (1) the reasons why
21 withdrawal is sought; (2) the prejudice withdrawal may cause to the other litigants;
22 (3) the harm withdrawal might cause to the administration of justice; and (4) the degree
23 to which withdrawal will delay the resolution of the case. *Id.* (internal citation omitted).

24 III. ARGUMENT

25 The Court should grant Gibson Dunn’s motion because good cause exists for
26 Gibson Dunn to withdraw as Swan’s counsel—namely, the complete breakdown in the
27 attorney-client relationship. Courts regularly grant a motion to withdraw as counsel
28

1 where, as here, the attorney-client relationship “has broken down to such an extent that
2 counsel can no longer represent” the client. *Bd. of Trustees of Sheet Metal Workers v.*
3 *AAA Mech. Constr.*, 2002 WL 32731427 at *1 (N.D. Cal. Oct. 9, 2002); *see also Lehman*
4 *Bros. Holdings, Inc. v. PMC Bancorp*, 2017 WL 4071384, at *2 (C.D. Cal. July 26,
5 2017) (internal citation omitted) (“Where there is a complete breakdown in the attorney-
6 client relationship, a request to withdraw is commonly granted.”).

7 Over the past several weeks, Gibson Dunn and Swan have engaged in discussions
8 regarding ending Gibson Dunn’s representation of Swan and Swan obtaining substitute
9 counsel to represent it in this action. Declaration of Harris M. Mufson ISO Motion To
10 Withdraw (“Mufson Decl.”) ¶ 3; Declaration of Matthew D. McGill ISO Motion To
11 Withdraw (“McGill Decl.”) ¶ 6. On November 6, 2024, Gibson Dunn received a letter
12 from Wollmuth, Maher & Deutsch LLP (“Wollmuth”) stating that Wollmuth represents
13 Swan and threatening to assert claims against Gibson Dunn. Mufson Decl. ¶ 3; McGill
14 Decl. ¶ 7.

15 On November 19, Wollmuth informed Gibson Dunn that Swan demanded
16 millions of dollars from Gibson Dunn just to consent to the withdrawal from this case.
17 Declaration of Martin A. Hewett ISO Motion To Withdraw (“Hewett Decl.”) ¶ 6. And
18 on November 22, Wollmuth informed Gibson Dunn that Swan will “never” pay Gibson
19 Dunn’s legal fees. Mufson Decl. ¶ 4 & Ex. A. Later that day, Swan initiated a lawsuit
20 against Gibson Dunn in the Los Angeles County Superior Court asserting claims of
21 breach of fiduciary duty and legal malpractice in connection with Gibson Dunn’s
22 representation in this matter. *Id.* Ex. B.

23 Gibson Dunn cannot continue to represent Swan under these conditions. It is now
24 in active, public litigation against Swan due to Swan’s filing of a lawsuit regarding
25 Gibson Dunn’s representation of Swan in this action. Swan’s filing of that action—
26 which, among other things, accuses Gibson Dunn of having “betrayed” Swan (Mufson
27 Decl. Ex. B, at 1 ¶ 1), of having “failing to zealously prosecute” this action (*id.* Ex. B,
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1 at 14 ¶ 55), and of “acting to the detriment of the goals of the representation” (*id.* Ex. B,
2 at 13 ¶ 50)—shows that Gibson Dunn cannot continue to represent Swan. While Gibson
3 Dunn denies the allegations in Swan’s complaint, those allegations make clear that Swan
4 has lost confidence in Gibson Dunn and that Gibson Dunn can no longer continue to
5 represent Swan in this action.

6 A recent decision involving similar facts, *Medina v. Boeing Company*, 2022 WL
7 16949670, at *3 (C.D. Cal. May 9, 2022), is instructive. In *Medina*, the court granted a
8 motion to withdraw as counsel finding good cause for withdrawal existed where, as here,
9 the plaintiff had accused her counsel of “malpractice related to their performance in this
10 matter.” *Id.* The court held that, given the plaintiff’s allegations against her counsel,
11 “denying the request for withdrawal would not result in the orderly administration of
12 justice.” *Id.* Good cause clearly exists to support Gibson Dunn’s withdrawal here, in
13 light of Swan’s initiation of litigation against it. *See also, e.g., L.S. ex rel. R.S. v. Panama*
14 *Buena Vista Union School Dist.*, 2012 WL 3236743, at *2 (E.D. Cal. 2012) (finding
15 good cause to grant a motion to withdraw based on plaintiff’s “threat of malpractice
16 lawsuits”).

17 Good cause for withdrawal also exists because Swan has made clear that it will
18 not pay Gibson Dunn’s legal fees in connection with this matter. Mufson Decl. ¶ 4 &
19 Ex. A. Courts routinely permit counsel to withdraw when a client refuses to pay
20 attorneys’ fees. *See, e.g., Holandez*, 2023 WL 8114882, at *3 (internal citation omitted)
21 (“[I]t is true that the failure of a client to pay attorney’s fees will serve as grounds for an
22 attorney to withdraw.”); *Medina*, 2022 WL 16949670, at *3 (noting that “the Court
23 cannot require [counsel] to continue representation when . . . a client is not paying her
24 bills”). Swan’s refusal to pay Gibson Dunn’s legal fees constitutes a separate basis for
25 finding good cause and granting Gibson Dunn’s motion to withdraw.

26 Permitting Gibson Dunn to withdraw will not prejudice Swan or any other
27 litigants, nor will it cause harm to the administration of justice or any delay in the
28

1 prosecution of this case. This matter was initiated less than three months ago on
2 September 25, 2024, and remains in the earliest stages of litigation. Mufson Decl. ¶ 10.
3 Neither a scheduling order nor trial date has been set. *Id.* In fact, Defendants have not
4 yet answered or otherwise responded to Swan’s Complaint, and are not scheduled to do
5 so until December 23, 2024. *Id.* The parties have also not yet engaged in discovery.
6 *See Huckabee v. Med. Staff at CSATF*, 2013 WL 3892950, at *5 (E.D. Cal. July 26,
7 2013) (finding “little, if any, prejudice” to other litigants, no harm to the administration
8 of justice, and no resulting substantial delay where, *inter alia*, “no discovery has taken
9 place and there are no current dates pending in this action”). Gibson Dunn has also
10 transferred its case file to Swan (at Swan’s request), and Swan is currently represented
11 by another firm (Wollmuth) in connection with these matters who could readily appear
12 as substitute counsel in this action. Mufson Decl. ¶¶ 5, 7, 10.

13 Having filed a claim for “malpractice” against Gibson Dunn alleging “betrayal,”
14 all related to this very case, Swan cannot even offer a credible claim of prejudice if
15 Gibson Dunn were to withdraw. Swan is essentially arguing that they do not trust
16 Gibson Dunn to zealously represent them, so Swan should be stipulating to Gibson
17 Dunn’s withdrawal, not opposing it. And there is no viable alternative to withdrawal.
18 Gibson Dunn cannot be compelled to represent Swan in a case that is the basis of an
19 already pending lawsuit against Gibson Dunn by Swan. Every single thing that Gibson
20 Dunn could do, or not do, in the case from this day forward would be questioned by
21 Swan and made the basis of future claims. And, in any event, Swan has known all along
22 that the arrangement between Gibson Dunn and Swan could lead to Gibson Dunn’s
23 withdrawal long before the case concluded. McGill Decl. ¶ 3.

24 Finally, in accordance with Local Civil Rules 83-2.3.2 and 83-2.3.4, on November
25 24, 2024, Gibson Dunn provided written notice to Swan of Gibson Dunn’s intent to
26 withdraw due to the breakdown of the attorney-client relationship, as well as the
27 consequences of Swan’s inability to appear *pro se* in this action as an organization.
28

1 Mufson Decl. ¶ 9 & Exs. A, C. Gibson Dunn is also serving a copy of this motion on
2 Swan. Mufson Decl. ¶ 11.

3 **IV. CONCLUSION**

4 For all these reasons, good cause exists for Gibson Dunn to withdraw as counsel
5 of record for Swan in this matter. Gibson Dunn thus respectfully requests that this Court
6 grant its motion to withdraw.

7
8 Dated: November 24, 2024

GIBSON, DUNN & CRUTCHER LLP

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10 By: /s/ Ilissa Samplin

11 Ilissa Samplin

12 *Attorneys for Plaintiff*
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L.R. 11-6.2 CERTIFICATION OF COMPLIANCE

The undersigned, counsel of record for ELECTRIC SOLIDUS, INC. d/b/a SWAN BITCOIN, certifies that this brief contains 1,848 words, which complies with the word limit of L.R. 11-6.1.

DATED: November 24, 2024

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Ilissa Samplin
Ilissa Samplin

Attorneys for Plaintiff